Office - Supreme Court, U.S.
FILED
JUN 6 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1739

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALTAMONT FARMS, INC., et al.,

Petitioners,

vs.

NELLY RIOS, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

RESPONDENTS' BRIEF IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Puerto Rican migrant farmworkers and family members, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the unanimous decision and decree of the Court of Appeals of the State of New York in this case. That

decision is reported at 64 N.Y. 2d 792, 476 N.E. 2d 312, 486 N.Y.S. 2d 913 (1985).

The order and opinion of the Appellate Division of the Supreme Court of the State of New York is reported at 100 A.D. 2d 405, 475 N.Y.S. 2d 520 (3d Dept. 1984).

The opinion of the Supreme Court of the State of New York is reported at 117 Misc. 2d 728, 459 N.Y.S. 2d 386 (Ulster Cty. 1983).[1]

QUESTION PRESENTED

1. WHETHER THE NEW YORK COURT OF APPEALS CORRECTLY HELD THAT THE PUERTO RICO COURTS DID NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IN EXERCISING JURISDICTION OVER THE PETITIONING GROWERS ON THE BASIS OF THEIR TRANSACTION OF BUSINESS IN PUERTO RICO.

STATEMENT OF THE CASE

Respondent migrant farmworkers sued the petitioner growers for breach of contract in the Commonwealth of Puerto

Rico courts under the Puerto Rico long arm statute. The statute (Petitioners' Brief, appendix F, 36a) provides personal jurisdiction over a non-resident who carries out business transactions within Puerto Rico personally or through an agent. The Puerto Rico courts, in entering default judgments in respondents' favor found that the growers had submitted detailed job offers to respondent workers through an agent, the Puerto Rico Department of Labor, which became contracts in Puerto Rico upon their acceptance by respondent workers and that part performance had occurred in Puerto Rico. These facts were held to constitute the transaction of business within Puerto Rico under its long arm statute. Puerto Rico extends its jurisdiction to the fullest extent permitted by the due process clause. Integrated Industries,

Inc. v. Continental Milling Co., 385 F.Supp. 883 (D.P.R. 1974); Roman Vela, Inc. v. Sagner, Inc., 382 F.Supp. 478 (D.P.R. 1974).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

1. THE UNANIMOUS DECISION OF THE NEW YORK COURT OF APPEALS IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT, OR OF A FEDERAL COURT OF APPEALS.

A. The New York Court of Appeals Correctly Applied The Principles Of Specific Personal Jurisdiction As Laid Down By This Court and Petitioners' Due Process Rights Were Not Violated. Respondents' Judgments For Breach of Contract Arise Out of Petitioners' Detailed Job Offers Made to Respondents in Puerto Rico. There is Therefore A Sufficient Relationship Between Petitioners, the Puerto Rico Forum, and the Litigation to Satisfy the Requirements of Specific Jurisdiction Under the Due Process Clause.

This Court has emphasized "the limited scope of review one court may conduct to determine whether a foreign court had jurisdiction to render a

challenged judgment. Underwriters National Assurance Co. v. North Carolina Life & Accident & Health Insurance Guaranty Assoc., 455 U.S. 691, 706 (1982).

This Court need only rule on whether the Puerto Rico courts had jurisdiction over causes of action arising out of contracts of employment negotiated on the basis of petitioners' job offers. It need not deal with the issue of whether Puerto Rico would have jurisdiction over petitioners as to causes of action unrelated to the business transacted in Puerto Rico. See Restatement, Conflict of Laws 2d, §35(3).

The record shows that petitioners' counsel made an express decision not to litigate the cases in Puerto Rico. His clients are bound by that decision. A default judgment is just as conclusive

an adjudication as one rendered after answer and contest in the court room. Morris v. Jones, 329 U.S. 545, 550-51 (1947).

Petitioners raise numerous questions going to the merits of the cause of action underlying the judgments against them. Thus they argue that respondents' acceptance was not in accordance with the terms of the offer, that the Puerto Rico Department of Labor was not an agent, that the contracts were not made in Puerto Rico, and that the transaction of business in Puerto Rico was not sufficient to satisfy the Puerto Rico long arm statute. These are all questions of Puerto Rico law on which the Puerto Rico courts have final say and which are now res judicata and not subject to collateral attack.

> The full faith and credit to which a judgment is entitled is the credit which it has

> in the State from which it is taken, not the credit that under other circumstances and conditions it might have had.

Morris v. Jones, supra. A judgment is conclusive as to all the media concludendi and cannot be impeached by showing that it was based upon a mistake of law. Fauntleroy v. Lum, 210 U.S. 230, 237 (1908).

It has been held that a state may constitutionally deem the act of recruiting its residents, directly or through an intermediary, for employment inside or outside the State, as the doing of business within the State. See Dotson v. Fluor Corp., 492 F.Supp. 313 (W.D. Tex. 1980) (Texas long arm statute). By parity of reasoning, Puerto Rico, through its courts, may deem the recruitment of its migrant workers through the Puerto Rico Department of Labor to be the transaction of

business in Puerto Rico through an agent within the meaning of its long arm statute.

Due process requirements are satisfied when in personam jurisdiction is asserted over a non-resident business entity that has "certain minimum contacts [with the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940).

In judging minimum contacts, a court properly focuses on "the relationship among the defendant, the forum and the litigation." Keeton v. Hustler Magazine, Inc., __U.S.__, 79 L.Ed. 2d 790, 798, 104 S.Ct. 1473 (1984); Shaffer v. Heitner, 433 U.S. 186, 204 (1977); see also Rush v. Savchuk, 444 U.S. 320,

332 (1980).

When a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the state is exercising "specific jurisdiction" over the defendant. Helicopteros Nacionales de Colombia v. Hall, __U.S.__, 80 L.Ed. 2d 404, 411 n.8 (April 24, 1984), citing Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1136, 1144-64 (1966).

Related contacts are weighed more heavily in favor of jurisdiction than unrelated contacts. Bulmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 Sup. Ct. Rev. 77, 82. Where the contact is of sufficient substance and quality, a single transaction may constitute a basis for jurisdiction under the Due

Process Clause. Burger King Corp. v. Rudzewicz, __U.S.__, 53 L.W. 4541, 4546 (1985); Mc Gee v. International Life Ins. Co., 355 U.S. 220 (1957).

Petitioners are engaged in the business of growing and harvesting apples. The harvesting of apples is labor-intensive requiring large numbers of workers to pick the fruit in a relatively short period of time. See PB 3. Because these workers are not available in sufficient numbers within the State of New York, petitioners, through their cooperatives, solicit large numbers of interstate and foreign agricultural workers.

As petitioners concede, in order to apply for visas for foreign workers, they must attempt to recruit U.S. workers first by submitting clearance orders or job offers through the employment service system. PB 3-4. This re-

quirement reflects the policies of the Immigration and Nationality Act and the Wagner-Peyser Act to give "to United States workers, including the citizens of Puerto Rico... a preference over foreign workers for jobs that become available within this country." Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592, 596 (1982).

Petitioners consciously consented to the interstate recruitment of workers on the basis of their job offers. See 20 C.F.R. §655.201(c). They each gave assurances that they would cooperate with the employment service system in the active recruitment of U.S. workers until the foreign workers had departed for the employer's place of employment by allowing the employment service system to prepare interstate job orders using the information supplied on the employer's job offer. 20 C.F.R.

§655.203(d)(1); Alfred L. Snapp & Son, Inc. v. Puerto Rico, supra, 458 U.S. at 596. The growers recognized that local and state-wide recruitment would not produce sufficient workers and that interstate recruitment, as in prior years, would probably be necessary. PB 6-7.

Respondent workers were hired in Puerto Rico on petitioners' job offers made available through the Puerto Rico Department of Labor. While petitioners now argue that these were not legally binding offers of employment, PB 5, the Court of Appeals held, in adopting the dissenting opinion of Justice Levine in the Appellate Division, that the growers'

> clearance orders represented formal offers to contract with responding workers, containing all the essential terms and conditions of employment, including rates of pay, and the date work was to begin and

> even provisions for financing transportation of the workers from the place of recruitment to the work sites. The orders, signed by each defendant, state "THIS JOB OFFER DESCRIBES THE ACTUAL TERMS AND CONDITIONS OF THE EMPLOYMENT BEING OFFERED BY ME AND CONTAINS ALL OF THE MATERIAL TERMS AND CONDITIONS OF THE JOB". (emphasis added). Clearance orders have been so construed by the Federal courts (Aguero v. Christopher, 481 F.Supp. 1272, 1274; Aguero v. Usery, U.S. Dist. Ct., (S.D. Tex., May 2, 1976, Garza,J.).

Rios v. Altamont Farms, 100 A.D. 2d 405, 414, 475 N.Y.S. 2d 520, 526.

Petitioners claim ignorance "of the fact that their job offers had gone to Puerto Rico". PB 8. The Court of Appeals found however that

> the record uncontestably establishes that they were made aware that the job orders were physically delivered to Puerto Rico employment offices in early August, 1978 , still well before the date harvesting was to commence in September. Defendants were kept aware of the progress of recruitment in Puerto Rico

> and, at one point, were told that because of the success of those efforts, their request for authorization to hire alien workers was denied.

100 A.D. 2d at 412; 475 N.Y.S. 2d at 525. The Court of Appeals also noted that petitioners' claims of ignorance were belied by their cooperative's litigation position in the U.S. District Court:

> Moreover, also in August, 1978, defendants participated through their growers' association in a suit in the Federal District Court to compel the United States Labor Department and Immigration Service to permit recruitment of foreign workers. In that action, they specifically assured the court that if the ban on foreign workers was lifted, they would still give priority to available Puerto Rican workers.

Id. See also Alfred L. Snapp & Son v. Puerto Rico, supra, 458 U.S. at 598 n.5.

Petitioners were well aware that the Department of Labor was actively recruiting Puerto Rican workers on the

basis of petitioners' job offers. The 1978 recruitment of Puerto Rican workers was a major undertaking with a substantial effect on the Puerto Rico labor market.

Eastern apple growers submitted job offers for more than 2,000 harvesting positions through the U.S. Employment Service. Alfred L. Snapp & Co. v. Puerto Rico, supra, 458 U.S. at 597; Rios v. Altamont Farms, supra, 100 A.D. 2d at 412. Although the Puerto Rico Department of Labor recruited sufficient workers to fill all of the openings, only 992 actually arrived on the mainland. The remainder never left Puerto Rico allegedly because of oral advice from the U.S. Department of Labor to cancel further flights as growers were refusing to hire the Puerto Rican workers who had already arrived. Alfred L. Snapp & Co. v. Puerto Rico, supra.

The Puerto Rico Department of Labor recruited 611 migrant workers on job offers filed by New York apple growers including petitioners. Of this number, 386 migrant workers arrived at New York orchards, the others remaining in Puerto Rico because of cancelled flights. Commonwealth of Puerto Rico ex rel. Quiros, Secretary of Labor v. Bramkamp, 654 F.2d 212, 214-15 (2d Cir. 1981), cert. denied, 458 U.S. 1121 (1982). Petitioner Altamont Farms was referred 65 Puerto Rican workers, representing its entire harvest labor needs. The other petitioners also had their entire labor needs satisfied from the unemployed population of Puerto Rico.

During the recruitment campaign, petitioners received other benefits:

> [T]he Commonwealth employment service widely publicized the job offers and recruited workers for over 2,000 harvesting positions in New

> York and elsewhere. Responding Puerto Rican farm laborers were then screened in two respects, i.e., their commitment to accepting the positions and their suitability, which entailed requiring applicants to submit certificates of good health and of lack of a criminal record. It is also an uncontested fact that the procurements and screening process continued throughout the month of August, 1978. During the course of the recruitment and screening process, defendants were advised of the numbers and names of workers whom they should expect to arrive to fill the requested positions. Services were also provided to expedite their embarcation by plane to the United States. Shortly after arriving at defendants' orchards in early September, however, the recruited workers were discharged. This happened to coincide with the successful conclusion of defendants' Federal action seeking relief from restrictions on their hiring Jamaican laborers.

100 A.D. at 412-13;475 N.Y.S. 2d at 525.

Respondents alleged that the discharges breached petitioners' promises in their job offers of minimum job

training and work and brought suit in the Puerto Rico courts. Their claims thus arise out of the affiliating contacts which under all the circumstances of the case can only be seen as conscious and purposeful. Not only did petitioners, as found by the Court of Appeals, "deliberately set in motion the job recruitment machinery of the interstate clearance system," they refrained from taking any action to stop the recruitment. Petitioners could have cancelled their job offers at any time prior to acceptance and avoided the jurisdiction of the Puerto Rico courts. They consciously chose not to withdraw their job offers, possibly because this would have adversely affected their foreign labor applications. Petitioners are seeking to have it both ways: to be credited with actively recruiting U.S. workers in Puerto Rico for purposes of

a bona fide foreign labor application while escaping the jurisdictional consequences of the recruitment.

When a state bases its jurisdiction on related contacts, it is merely requiring the defendant to bear the costs arising out of occurrences in the forum. Bulmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, supra, 1980 Sup. Ct. Rev. at 87. The apple growers' interstate job offers intruded into the economic lives of the unemployed Puerto Rican farmworkers and stimulated them to go to New York to work for petitioners.

> The burden of such a rule on the defendant can be considered a not unfair incident of its operation, while the burden upon the plaintiff injured at home by the activity of a company halfway across the country would be great if he had to go to the defendant's headquarters to obtain recompense.

Von Mehren & Trautman, supra, 79 Harv.

L. Rev. at 1171. See also 100 A.D. 2d at 417.

Knowing the recruitment effort that was being made on their behalf, 100 A.D. 2d at 412, 475 N.Y.S. 2d at 525, and receiving employment service benefits in Puerto Rico, petitioners should have been aware that they might be "haled into court" in Puerto Ricc if disputes arose over the employment contracts. Cf. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). As potential defendants in breach of contract suits by Puerto Rican migrant farmworkers, petitioners could have "structure[d] their primary conduct" by cancelling their job offers and removing their liability to suit. Id. They chose not to do so. At the very least, the inactions on which petitioners now chiefly rely in their claim of unfair treatment, PB 8, created an ambiguous situa-

tion for which they, not unfairly, must bear the legal responsibility. Petitioners were businesses acting through their cooperative to secure interstate labor for their operations. The Puerto Rico recruitment was not "random", "fortuitous", or "attenuated", but the predictable outcome under the employment service system of petitioners' open interstate offer of employment to numerous unemployed workers. "[T]he Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." Burger King Corp. v. Rudzewicz, supra, __U.S.__, 53 L.W. 4541, 4545.

Having correctly determined that peitioners had sufficient contacts with Puerto Rico, the Court of Appeals properly went on to consider other factors in the jurisdictional equation

set forth in the Volkswagen case.

The Court of Appeals correctly considered the forum state's interest in adjudicating the dispute. Keeton v. Hustler Magazine, Inc., supra, __U.S.__, 79 L. Ed. 2d 790, 103 S. Ct.; Insurance Corp. v. Campagnie des Bauxites, 456 U.S. 694, 702-703 n. 10 (1982); World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 292; Mc Gee v. International Life Ins. Co., supra, 355 U.S. at 223. Puerto Rico has a strong interest in reducing its substantial rural unemployment, see Alfred L. Snapp & Son v. Puerto Rico, supra, 458 U.S. at 599 n.7, 609, and in securing its fair share of benefits under the interstate employment system. Id. at 610. It has an interest in protecting its migrant workers from abuses as shown by its enactment of Public Law 87. PB 7. It has an interest in providing a forum when

contracts made with its citizens through the employment service in Puerto Rico are allegedly broken.

The Court of Appeals also properly took into account the respondent migrant farmworkers' interest in obtaining relief in the courts of their home jurisdiction where they were recruited for work on the mainland. 100 A.D. 2d at 417-18; 475 N.Y.S. 2d at 528; see World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 292. For each of these workers to attend a deposition and later a trial in New York on their contract claims would be beyond their means, and in many cases, would exceed the amount of any recovery. Limiting the available forum to New York alone would, in effect, make the growers litigation proof against the claims arising out of their Puerto Rico solicitations. 100 A.D. 2d at 417-18; 475 N.Y.S. 2d at 528; cf. Mc Gee v.

International Life Ins. Co., supra, 355 U.S. at 223.

Petitioners' claim that the Court of Appeal's decision is poor public policy and a threat to the employment service is unfounded.

Petitioners argue that to treat the respondents' acceptances as creating binding contracts would "wreak havoc" with workers ariving from many distant points. PB 14. This argument neglects the monitoring function of the regional offices of the Department of Labor. The Regional Administrator determines the areas of labor surplus to which the clearance orders shall be sent. PB 6. The clearance orders signed by petitioners were expressly designated for distribution to Regions II, IV and VI, not the whole country. Federal Region IV includes Florida; Region VI, Texas; Region II includes New York,

Puerto Rico and the Virgin Islands. United States Government Manual 1981/82, appendix D, 867. It is only those workers recognized by the U.S. Department of Labor as having made a "firm commitment" to the job offer who are regarded in satisfying the employer's labor needs. 20 C.F.R. §655.206(a); 203(e). Petitioners recognize that as soon as sufficient workers are recruited to meet an employer's labor needs, the recruitment process stops. PB 6. Computerized monitoring of clearance order recruitment prevents over recruitment. In the present case, no recruitment occurred in Florida or Texas where the clearance orders were also sent. No petitioner claims to have been supplied too many workers. The "havoc" claim is simply false.

Petitioners then argue that the potential liability to suit in the state where the workers are recruited will

cause employers to abandon the employment service system en masse. This threat is unlikely to be carried out, it is submitted, so long as the laws require the submission of a job order in the system as a precondition to obtaining visas for temporary foreign workers.

B. The Decision of the Court of Appeals Is Not In Conflict With the Decision of Another State Court of Last Resort or of a Federal Court of Appeals. It is Consistent With Decisions of the Federal District Court.

Petitioners argue that the Court of Appeals' decision is in conflict with those of other state courts. However, the cases they cite, PB 19, are decisions of state courts of first instance, without written opinions, and which are currently on appeal. They are not decisions of "another state court of last resort" as stated in Rule 17 and are therefore not a reason for granting certiorari.

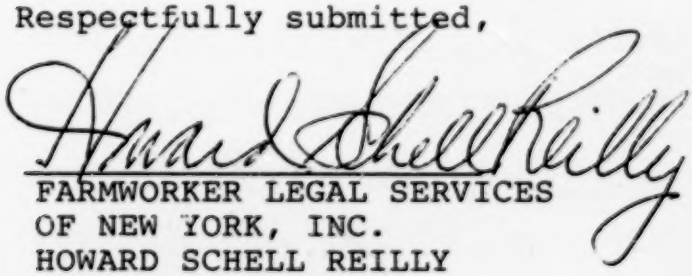
Petitioners can point to no decision of a federal court of appeals that is in conflict with the decision of the New York Court of Appeals. This issue has not been ruled on by a federal court of appeals, but every federal district court which has considered the matter has decided it the same way as the New York Court of Appeals. Acker v. Hepburn Orchards, unreported decision, No. 82-715-Civ.-T-WC (U.S. Dist. Ct. M.D. Fla. Nov. 29, 1982 per Castagna, J.)(appendix A, infra); Neizil v. Williams, 543 F.Supp. 899 (M.D. Fla. 1982); Garcia v. Vasquez, 524 F.Supp. 40, 42 (S.D. Tex. 1981); Aguero v. Christopher, 481 F.Supp. 1272 (S.D. Tex. 1980). Those cases hold that the purposeful submission of a job offer to migrant farmworkers in the interstate clearance system creates jurisdiction in the recruiting states to hear controversies

arising out of the recruitment. Those cases should not be distinguished on the basis of making or refraining from making a telephone call. The purposeful submission of a job offer in the interstate clearance system is sufficient to support jurisdiction. The employer is adequately protected by his power to cancel or withdraw his offer where he seeks to avoid the jurisdictional consequences of interstate recruitment.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,



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APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

EUGENE ACKER, et al.,

Plaintiffs,

vs.

HEPBURN ORCHARDS, INC.,

Defendant.

Case No. 82-715-Civ.-T-WC

ORDER

The Court has for consideration Plaintiff's Motion to Strike. In essence, Plaintiff seeks a ruling on the propriety of this Court's personal jurisdiction over the Defendant and of venue in the Middle District of Florida.

Plaintiffs allege that Defendant, subject to the regulations under the Department of Labor's Temporary Agricultural Labor Program, 8 U.S.C. §1101(a)(15)(H)(ii), was required to

attempt to find domestic labor to pick their apple crop prior to hiring foreign workers for this purpose. Pursuant to the regulations, Defendant was required to and did fill out a job order to be distributed by the United States Employment Service to offer employment to United States workers. The job order was circulated to the Employment Service Office in Winter Haven, Florida, where Plaintiffs learned of the job offer and traveled to Maryland to accept the work offered. The Complaint alleges that Defendant refused to employ Plaintiffs.

Taking the allegations of the Complaint as true and construing the pleadings in the light most favorable to Plaintiffs, Poston v. American President Lines, Ltd., 452 F.Supp. 568 (S.D. Fla. 1978), the Court is of the opinion that Plaintiffs have made a prima facie showing of facts upon which in personam

jurisdiction can be based. Jetco Electronic Industries, Inc.v. Gardiner, 473 F.2d 1228 (5th Cir. 1973). Plaintiffs must demonstrate that Defendant's contacts with the forum state were sufficient to require Defendant to defend in Florida without violation of "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Furthermore, Defendant's minimum contact with Florida must have been a purposeful attempt to avail itself of the privilege of conducting business in the forum state. Product Promotions, Inc. v. Cousteau, 495 F.2d 483, 494 (5th Cir. 1974), citing Hanson v. Denckla, 357 U.S. 235 (1958).

Plaintiff's Complaint alleges that Defendant utilized the interstate clearance system to recruit farm labor throughout the country, including

Florida. The purposes of the Wagner-Peyser Act, 29 U.S.C. §201 et seq., which created the United States Employment Service, are at least two-fold. In addition to offering "some protection to those migrant employees who move about the country in search of manual labor," the Employment Service concurrently benefits employers "by establishing a national network for efficient recruitment of labor." Garcia v. Vasquez, 524 F.Supp. 40, 42 (S.D. Texas 1981). By availing itself of the benefits of the Employment Service in Florida, the Defendant also availed itself of the benefits of Florida as a forum state through recruitment of labor within the state. See Neizel v. Williams, No. 82-3-Civ-OC (M.D. Fla., July 16, 1982), an analogous case in which the Court found a sufficient contact with the forum under a similar

set of facts.

The propriety of personal jurisdiction having been settled, the venue problem is readily disposed of. Venue is proper in the Middle District of Florida under 28 U.S.C. §1391(c), because Defendant's activities subjecting it to jurisdiction in this forum also constituted "doing business" for venue purposes. Fraley v. Chesapeake & O.R. Co., 397 F.2d 1 (3d Cir. 1968); Houston Fearless Corp. v. Teter, 318 F.2d 822 (10th Cir. 1963).

In its Memorandum in opposition to Plaintiff's Motion to Strike, Defendant questions the means by which Plaintiffs actually became aware of the Defendant's need for seasonal labor. Defendant asserts it never received a referral of Plaintiffs from any office connected with the United States Employment Service's clearance system. Conceivably, after all the evidence concerning the nature and

extent of Defendant's contact with this forum is presented, Plaintiffs will not have sustained their ultimate burden of demonstrating that jurisdiction over this Defendant is proper. Rule 12(d), Federal Rules of Civil Procedure, permits the Court to defer final ruling on the Rule 12(b)(2) defense of lack of jurisdiction over the person until trial of the case. Furthermore, motions to strike are not generally favored and will only be granted when the material to be stricken has no possible relation to the controversy. Plaintiffs have made no showing of harm to them that would persuade the Court to determine a disputed issue of law and fact upon a motion to strike rather than making its determination on the merits. Poston v. American President Lines, Ltd., 452 F.Supp. at 570; Augustus v. Board of Public Instruction, 306 F.2d 862, 868 (5th Cir. 1962). For these reasons, it

is

ORDERED:

1. Plaintiff's Motion to Strike is denied.

DONE AND ORDERED at Tampa, Florida this 29th day of November, 1982.

WILLIAM J. CASTAGNA
U.S. District Judge